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10
11 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON
12 **AT YAKIMA**

13 STATE OF WASHINGTON, et al.,

14 Plaintiffs,

15 v.

16 DONALD J. TRUMP, et al.,

17 Defendants.
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19
20
21
22

NO. 20-03127-SAB

PLAINTIFFS' STATUS REPORT
AND REQUEST FOR STATUS
CONFERENCE

1 The Plaintiff States respectfully submit this status report and request a
 2 telephonic status conference on Friday, October 30, to provide the Court with an
 3 update regarding USPS's consistently poor Election Mail performance data in
 4 certain regions and to ensure compliance with the Court's preliminary injunction,
 5 including obtaining any additional relief that may be necessary so that
 6 Defendants deliver outstanding ballots to voters and timely deliver completed
 7 ballots to elections officials.

8 On October 29, Defendants produced service-performance data reflecting
 9 unacceptably low rates of on-time delivery of First Class Mail, and ballots
 10 specifically, in multiple parts of the country. *See* Exhibits A-2, and A-3. Taking
 11 the Detroit District as an example, the processing score for inbound ballots¹—
 12 ballots that are sent by voters to elections offices—has ranged from 57% to 84%
 13 in the past week. *See* Exhibit A-3. By comparison, the national processing score
 14 has been 93% or higher. The processing score metric is a measure of timeliness:
 15 it reflects the percentage of ballots that met the applicable service performance
 16 standard (e.g., 1-3 days for Election Mail in the continental United States), as

17 _____
 18 ¹ The Postal Service states that it is unable to calculate the processing score
 19 for all ballots it processes, and that it is only capable of providing a performance
 20 score for ballots with an Intelligent Mail Barcode or ballots bearing a service type
 21 ID code that specifically identifies the ballot as outgoing to voters or incoming
 22 from voters. *See* Exhibit A.

1 measured by when a ballot is first scanned at a processing facility to when it is
 2 last scanned at a processing facility. The Detroit District's processing score for
 3 outbound ballots—ballots that are sent to voters—has been below 60% this past
 4 week, whereas the national score has not dipped below 91%. *See* Exhibit A-3.

5 The parties conferred regarding the ballot performance data the same day,
 6 Thursday, October 29. Defendants' counsel stated that one reason for the low on-
 7 time delivery rates was that the volume of data may be too small to be statistically
 8 valid. But Defendants have provided processing score percentages for the Detroit
 9 District to the hundredth decimal, indicating that each individual percentage
 10 figure represents at least a thousand ballots.² Defendants also stated that these
 11 figures are not representative of all ballots. But the reported data still show that
 12 the Postal Service is failing to timely deliver a significant number of trackable
 13 ballots, and that such ballots remain undelivered to voters or will not be delivered
 14 to elections officials in time to be counted. In short, the data reflect persistently
 15 low rates of on-time delivery of a significant number of ballots in certain regions.
 16 Meanwhile, service performance as to ballots not reflected in Defendants'
 17 produced data is unknown.

18 The Plaintiff States initially raised concerns about ballot delays in
 19 Michigan on Monday, October 26, and have provided Defendants with

20
 21 ² The smallest fraction for 84.24%, the inbound ballot processing score on
 22 October 28, is 1053/1250.

1 information supporting these concerns. The Plaintiff States sought information
2 about the scope of and reasons for such delays throughout the week, but have yet
3 to receive a satisfactory response. Plaintiffs believe that the ballot delays are, at
4 least in part, the result of Defendants’ failure to take “extraordinary measures” to
5 accelerate the delivery of ballots, as required by the injunction. ECF No. 90 at 3.
6 And as shown by the disparity in processing scores between districts such as
7 Detroit and the nation, and the persistence of poor processing scores, Defendants
8 are not generally delivering ballots in line with First-Class Mail delivery
9 standards as required by the Court’s injunction. *Id.* at 2–3. Plaintiffs therefore
10 request a status conference to present the information above to the Court; to offer
11 Defendants an opportunity to provide additional information or explanation, if
12 any; and to seek further relief as necessary so that Defendants take additional
13 measures to “accelerate the delivery of ballots” to ensure that all duly cast votes
14 are counted. *Id.* at 3.

1 DATED this 29th day of October, 2020.

2 ROBERT W. FERGUSON
3 Attorney General

4 */s/ Noah Guzzo Purcell*

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*Attorneys for Plaintiff State of
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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 29th day of October, 2020, at Tumwater, Washington.

/s/ Jennifer D. Williams

JENNIFER D. WILLIAMS

Paralegal